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Paper No. 5

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FEB 5 2002

In re Application of
Kelvin T. Lueng, Son Dao and
Eddie Shek
Application No. 09/921,296
Filed: August 2, 2001
Attorney Docket No. HRL069
For: APPARATUS AND METHOD FOR
CONTEXT-SENSITIVE DYNAMIC
INFORMATION SERVICE COMPOSITION
VIA MOBILE AND WIRELESS NETWORK
COMMUNICATION

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: **OFFICE OF PETITIONS**
: DECISION REFUSING
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: STATUS UNDER 37 CFR 1.47(a)
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This is in response to the petition, filed November 14, 2001, for "acceptance of the declarations for this application without the signature of Kelvin Leung, whose most recent known address is entered into the declaration form." This petition is properly considered under 37 CFR 1.47(a).

The petition is **dismissed** as untimely. The period for response continues to run from the mailing date of the "Notice to File Missing Parts of Application" mailed September 10, 2001. This decision is made without prejudice to reconsideration upon the timely and proper filing of a petition for an extension of time for response. This petition must be filed prior to expiration of the maximum extendable period for reply, on April 10, 2002¹.

Failure to file a timely and proper response will result in abandonment of the application.

The above-identified application was filed on August 2, 2001, naming Kelvin T. Lueng, Son Dao and Eddie Shek as joint inventors but without an executed oath or declaration. Accordingly, on September 10, 2001, applicants were mailed a "Notice to File Missing Parts of Application," requiring a properly executed oath or declaration and a surcharge for late filing. In addition, the Notice requested the filing of the missing statutory basic filing fee and additional claim fees for 2 total claims over 20. This Notice set a period for reply of two months from the mailing date of the notice to November 13, 2001 (November 10, 2001 was a Saturday, and November 12, 2001 was a federal holiday).

On November 14, 2001, applicant filed the instant petition. The petition was filed by Express Mail² and was stamped as received in the Office of Initial Patent Examination on November 14, 2001

¹ Unless specifically limited, the TWO-MONTH period for filing a response to a Notice to File Missing Parts of Application may be extended for up to five months. See 37 CFR 1.136.

² The paper was accorded the November 14, 2001 as a date of receipt in the Office. However, it is not clear that the paper is even entitled to that date as applicant did not comply with the provisions of \$1.10. The Express Mail Label Number is on the fee transmittal, but not on the petition.

consistent with the date-in on the Express Mail label. However, the petition was not made timely by an accompanying petition for an extension of time. A review of the record reveals that it does not include a constructive petition for an extension of time. The interruptions in mail service affecting the USPTO in November 2001 were considered and determined not to be a factor in the late submission of this response. Accordingly, the response filed November 14, 2001 must be dismissed as untimely.

Applicants are further advised that a grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor in the petition. Applicants are encouraged to further review the petition filed November 14, 2001 for compliance with the requirements of §1.47(a) in light of the guidance set forth in MPEP 409.03, Rev. Aug 1., 2001.

Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries related to this decision may be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.



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